ZFW AF/1600

OBLON
SPIVAK
MCCLELLAND
MAIER
&
NEUSTADT
P.C.

ATTORNEYS AT LAW

J. DEREK MASON
(703) 413-3000
DMASON@OBLON.COM

Docket No.: 209774US0PCT

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

RE: Application Serial No.: 09/869,123
Applicants: Karsten REIHS, et al.
Filing Date: October 3, 2001
For: ULTRAPHOBIC SURFACE
Group Art Unit: 1711
Examiner: BISSETT, MELANIE D.

SIR:

Attached hereto for filing are the following papers:

Reply Brief (In Triplicate), Request for Oral Hearing

Our credit card payment form in the amount of **$1,000.00** is attached covering any required fees. In the event any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 C.F.R 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit the difference to our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 C.F.R. 1.136 for the necessary extension of time. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Norman F. Oblon

J. Derek Mason, Ph. D.
Registration No. 35,270

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Customer Number
22850
(703) 413-3000 (phone)
(703) 413-2220 (fax)

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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF	:
KARSTEN REIHS, ET AL.	: EXAMINER: BISSETT, MELANIE D.
SERIAL NO: 09/869,123	:
FILED: OCTOBER 3, 2001	: GROUP ART UNIT: 1711
FOR: ULTRAPHOBIC SURFACE	:

REPLY BRIEF

BOARD OF PATENT APPEALS AND INTERFERENCES
ALEXANDRIA, VIRGINIA 22313

SIR:

This is Reply Brief in response to the Examiner's Answer dated May 19, 2005, and is filed concurrently with a Request for Oral Hearing in the present Appeal.

In the Examiner's Answer, the Examiner has commented regarding Appellant's Rule 1.132 Declaration, stating:

> "However, the Appellant appears to have shown only **estimated** values for the prior art. A theoretical result does not substitute for factual, measured results. In this case, it appears that three of the substrate surface dimensions of a few examples of the prior art have been used to generate a number of data points, which were then used to calculate a value for the S integral." (see Examiner's Answer at page 9, section (11) part 1.)

The Examiner has completely ignored a critical statement within the Declaration of Dr. Reihs. In particular in the paragraph bridging pages 1 and 2 of the Declaration, Dr. Reihs states:

> "The data of Examples 1, 7, 8 and 10 of the Clark reference (U.S. Patent 5,674,592) were used to calculate the topography of surfaces consisting of nanostructure elements according to Clark as embodied in the S integral value as used in the present invention. In particular, the data used were the height of the nanostructure elements, the tip diameter of the nanostructure elements and the areal number densities of the nanostructure elements. ***These were the same data used in calculating the value of the S integral in the examples of the present application.*** The calculations were performed with 262,144 points per calculation. This number of points per calculation is more than adequate to model the topography accurately." (emphasis added)

Dr. Reihs has specifically pointed out that the data used from the Clark reference in order to compare the Clark reference with the present invention examples, is the same data (i.e. the height of the nanostructure elements, the tip diameter of the nanostructure elements and the areal number densities of the nanostructure elements) used in calculating the S integral in the present invention examples! Appellants have provided copies of the various references recited within the present specification that describe how to use this information in getting the height profiles and then using that to determine the S integral.

The Examiner has further questioned the accuracy of the data points generated by the calculations used in the Declaration. However, the Examiner has provided no factual basis on which to question the accuracy of the data points, while Appellants have provided the scientific literature describing how these data points are generated and used in determining the S integral values. If the Examiner has a factual basis to doubt the Declarant's sworn statement, the Examiner should provide it in the form of a reference, or in the form of a sworn statement of the Examiner.

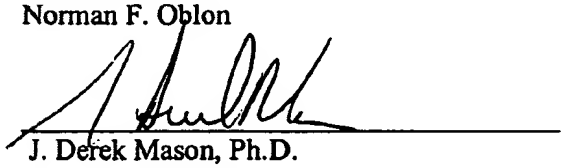
The Examiner states in the Examiner's Answer that Appellants have not enabled the invention since, while the application describes various methods of measuring and calculating the surface properties, and a number of materials and surface modification methods, the

specific steps or combinations of materials that are used to achieve the claimed properties are discussed. Appellants strongly disagree. The application sets forth not only various molding methods for creating the desired topography to satisfy the present invention claims (see specification at pages 19 *et seq*), but also sets for **specific examples** beginning at page 29 using a roll-polished $AlMg_3$ sheet, including the various preparatory steps (degreasing, prepickling, electrochemical pickling, rinsing, anodic oxidation, coating using techniques such as atomization and immersion, as well as various moulding techniques including negative and positive molding. What more can the Examiner possibly be asking for in terms of details on how to achieve the present invention? Both legally and factually, Appellants have met the requirements of enablement (as well as those for patentability in light of the prior art).

Since the Examiner's position cannot withstand close scrutiny, either legally or factually, Appellants submit that all rejections in this application should be REVERSED.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Norman F. Oblon



J. Derek Mason, Ph.D.
Attorney of Record
Registration No. 35,270

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)